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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 SEP 10 PM 3: 22

GENIE HICKS, CLERK ✓

BY: N. Sears

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA,
14
15 Plaintiff,

16 vs.

17 STEVEN CARROLL DEMOCKER,
18 Defendant.

) No. CR 2008-1339

) Div. 6

) DEFENDANT'S REPLY TO
) STATE'S RESPONSE TO HIS
) MOTION FOR REEXAMINATION
) OF CONDITIONS OF RELEASE

) (Oral Argument and Hearing
) Requested)

19
20 Defendant Steven C. DeMocker, by and through counsel, hereby replies to the
21 State's response in opposition to his Motion for Reexamination of Conditions of
22 Release.

23 **BACKGROUND**

24 The State opposes this motion on the grounds that Defendant is not entitled to an
25 evidentiary hearing on this motion, and that he has failed to present "material facts not
26 previously presented to the Court" that would justify a modification of his conditions of
27 release. Defendant will address each of these contentions below.
28

1 As the Court knows, A.R.S. § 13-3967 (B)¹ defines the appropriate
2 considerations for the Court to use in determining the method of release or the amount
3 of bond. These considerations include the following: the views of the victim; the
4 nature and circumstances of the offense; the weight of the evidence against the accused;
5 the accused's family ties, employment, financial resources, character and mental
6 condition; the results of any drug test; whether the accused is using any illegal
7 substances; whether the accused violated certain drug offense; the length of residence in
8 the community; the accused's record of arrests and convictions; and the accused's
9 record of appearance at court proceedings or of flight to avoid prosecution or failure to
10 appear.

11 ARGUMENT

12 I. Defendant is Entitled to Be Heard On His Motion.

13 While Defendant is not entitled to a full-blown evidentiary hearing, he is
14 nonetheless clearly entitled to a hearing because his motion alleges new and material
15 facts not previously considered by this Court. *See Mendez v. Robertson*, 202 Ariz. 128,
16 at 131 (App. 2002). Furthermore, on August 25, 2009, this Court asked counsel for the
17 State, in open Court, if he had any objection to the September 22, 2009 hearing being
18 set, and counsel said that he did not. At the hearing, Defendant intends to argue the
19 issues raised in his motion and to present detailed information to the Court regarding the
20 sophisticated and highly effective "active" GPS monitoring and tracking system he
21 proposes to utilize in this case.

22 II. Defendant Has Properly Alleged the Existence of New and Material 23 Facts Bearing Upon His Release Conditions.

24
25
26
27 ¹ This Court's prior determination that Mr. DeMocker is entitled to bail means that A.R.S. § 13-3967 applies.

1 Mr. DeMocker and his family have carefully investigated the availability of
2 "active" GPS monitoring (as opposed to the less sophisticated "passive" monitoring
3 system previously presented to the Court), and have located a new provider that offers
4 active GPS tracking and monitoring using equipment already in use in Yavapai County
5 for the monitoring of sex offenders. The difference, in simple terms, is that the active
6 system allows the real-time, 24/7 monitoring of Defendant and instantaneous
7 notification when a breach occurs. Mr. DeMocker and his family agree to pay all the
8 costs of this PS monitoring. This is a far more reliable and tamperproof system than the
9 one previously suggested by Defendant in his first release motion, and will also save the
10 County the considerable costs of incarcerating Mr. DeMocker. This new and greatly
11 improved GPS monitoring and tracking system will help reassure the Court of Mr.
12 DeMocker's future appearance, consistent with his previous behavior in this case.

13 Second, the weight of the evidence against Defendant, which this Court has
14 previously found to fall short of the "proof evident" standard, has not changed to the
15 State's favor despite nearly fourteen months of investigation. In its response to this
16 motion, the State is reduced to arguing that the fact that they still have no proof of any
17 actual element of any offense charged is somehow cured by their claim that Defendant
18 had the opportunity to commit this murder. It seems logical, at least to Defendant, to
19 reexamine the continuing need to hold Defendant on such a large bond when the proof
20 against him remains so weak despite months of investigation and testing and re-testing
21 of biological evidence in a vain effort to find something that actually incriminates him.
22 This is a statutory factor to be considered with respect to the motion at hand, and the
23 fact that the evidence has not improved in the slightest is, in and of itself, a new and
24 highly material fact for this Court to consider now.

25 Third, despite the best efforts of the State in offering to improve Defendant's
26 conditions of confinement, it will be apparent to the Court after the hearing on this
27

1 motion that his ability to meaningfully assist in his own defense in this highly complex
2 case is impossibly crippled, and that the State will be unable to rectify those problems in
3 a way that affords Defendant his Sixth Amendment right to the effective assistance of
4 counsel. The State concedes that this is new evidence, and accordingly, Defendant is
5 entitled to a hearing.

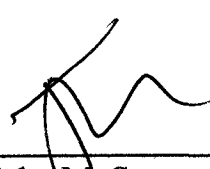
6 CONCLUSION

7 For these reasons, Mr. DeMocker respectfully requests that the Court order the
8 following:

- 9 1. Revoking the previously ordered \$2,500,000 cash or secured appearance
10 bond through a bail bondsman;
- 11 2. Setting bond at a reasonable, reduced amount, to be posted with cash or by a
12 secured appearance bond through a bail bondsman;
- 13 3. Active GPS electronic monitoring, with all costs to be paid by Mr.
14 DeMocker. In the event Mr. DeMocker leaves the area defined by the Court
15 without prior permission of the Court, removes, attempts to remove or
16 otherwise tampers with the monitoring device, or fails to appear at any
17 scheduled hearing, the monitoring company shall promptly notify Judge
18 Lindberg's chambers and/or his designee(s) of that fact; and
- 19 4. Supervision of Defendant by the Pretrial Services Division of the Yavapai
20 County Adult probation Department

21 DATED this 10th day of September, 2009.

22 By:

23 
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ORIGINAL of the foregoing filed
this 10th day of September, 2009, with:

Jeanne Hicks,
Clerk of the Court
Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

COPIES of the foregoing hand delivered
this 10th day of September, 2009, to:

The Hon. Thomas B. Lindberg
Judge of the Superior Court
Division Six
120 S. Cortez
Prescott, AZ 86303

and mailed to:

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